

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN HANCOCK LIFE INSURANCE
COMPANY, JOHN HANCOCK VARIABLE
LIFE INSURANCE COMPANY, and
MANULIFE INSURANCE COMPANY (f/k/a
INVESTORS PARTNER INSURANCE
COMPANY),

Plaintiffs,

v.

ABBOTT LABORATORIES,

Defendants.

CIVIL ACTION NO. 05-11150-DPW
Hon. Judge Douglas P. Woodlock

**ABBOTT LABORATORIES' OPPOSITION TO
HANCOCK'S CROSS-MOTION TO ADMIT OTHER DISPUTED EXHIBITS**

Defendant Abbott Laboratories ("Abbott") respectfully submits this opposition to
Hancock's cross-motion to admit other disputed exhibits, filed on April 18, 2008.

ARGUMENT

Hancock argues that certain documents are admissible as "party admissions" under Rule 801(d)(2). *See* Hancock's Opp. to Abbott's Mot. to Overrule and Cross Mot. ("Hancock Mot."), Ex. C, p. 2; Exs. [389], [396], [397], [398]. The documents, however, were authored by and produced by third parties, and do not qualify as party admissions. *See, e.g.,* Weinstein's Federal Evidence, § 801.33[2][b] ("[s]tatements do not qualify [for admission] under Rule 801(d)(2)(D) if made by someone who is neither an agent nor an employee of the party", thus "statements of a party's independent contractors typically do not come within Rule 801(d)(2)(D)."). Exhibit [389] is an internal email produced by Resource Solutions, Inc. (a/k/a Constella Group or

“RSI”), an independent contractor. *See* Ex. 389. Similarly, Exhibits [396], [397] and [398] are not party admissions; rather, they were authored and produced by McKinsey & Company, a third party independent contractor. Nor are these exhibits admissible under the business records exception. Ms. Hopfield specifically testified that Exhibit [397] and Exhibit [398] were “thought exercise[s]” that probably were not distributed to Abbott and likely contain inaccuracies. Hopfield Depo. at 116:6-118:13 (“I doubt [Exhibit [397]] is either complete or accurate.”), 221:10-228:20.

Hancock argues that Exhibit [390] is admissible as a party admission, but the exhibit consists of unauthenticated handwritten notes and there is no evidence that the notes reflect statements of Abbott employees or agents, as opposed to independent contractors or other third parties. Therefore, Exhibit [390] is inadmissible hearsay.

Exhibit [391] consists of two unrelated documents (a) a May 23, 2001 email with no attachments and a Bates range of ABBT364994-96 and (b) an undated presentation with a Bates range of ABBT0548527-34. Since, there is no evidence that the presentation was ever attached to the email, Hancock’s compilation of the two unrelated documents into a single exhibit is based on speculation and is misleading. Similarly, Exhibit [393] and Exhibit [395] are compilations of separate documents, with no evidence of the relationship, if any, between the documents and no showing that the elements of the business records exception are satisfied. *See, e.g.*, Woidat Depo. at 188:6-24 (Hancock counsel conceded that Exhibit 395 is a compilation of separate documents and Mr. Woidat did not recall whether he ever saw the documents).

Hancock represents that it is offering Exhibit [394], an email from Chris Martinez to Michelle Campbell solely for notice to Abbott and not for the truth of the matters stated. *See* Hancock’s Mot., Ex. C, p. 2. Abbott does not object to admission of the exhibit, provided it is

relied upon solely for that limited purpose.

I. CONCLUSION

For the reasons stated above, Abbott respectfully requests that the Court sustain Abbott's objections to Exhibits [389], [390], [391], [393], [395], [396], [397], and [398].

Dated: May 2, 2008

ABBOTT LABORATORIES

By its attorneys

/s/ Eric J. Lorenzini

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 2, 2008.

Date: May 2, 2008.

_____/s/ Eric J. Lorenzini